

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
6-14-16
04:59 PM

Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the California Solar
Initiative, the Self-Generation Incentive Program and
Other Distributed Generation Issues

Rulemaking 12-11-005
(Filed November 8, 2012)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE
PROPOSED DECISION REVISING THE SELF-GENERATION INCENTIVE
PROGRAM PURSUANT TO SENATE BILL 861**



Marcel Hawiger
Staff Attorney

THE UTILITY REFORM NETWORK

785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876 ex. 311
Fax: (415) 929-1132
Email: marcel@turn.org

June 14, 2016

TABLE OF CONTENTS

| | | |
|----|--|---|
| 1. | The PD Commits a Legal Error by Maintaining the Ten-Year Comparison Period | 2 |
| 2. | The Commission Could Meet the Statutory Requirements by Changing the Weighting of the Long and Short Term Components of the Emission Factor Equation to Account for at Least a 15-Year Time Period | 3 |

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE
PROPOSED DECISION REVISING THE SELF-GENERATION INCENTIVE
PROGRAM PURSUANT TO SENATE BILL 861**

Pursuant to Rule 14.3, the Utility Reform Network (“TURN”) submits these reply comments on the Proposed Decision of President Picker (“PD”) updating revising the Self-Generation Incentive Program (“SGIP”) to comply with the requirements of Senate Bill 861 (2014).¹

TURN did not submit comments on the PD. TURN identified valid potential errors in the comments of other parties and recommends the following:

- The Commission should maintain the existing in-state requirements for delivered biogas.
- However, if the Commission adopts the CEC delivered biogas requirements for RPS projects, it should likewise adopt the statutory requirements for environmental benefits in California. There is absolutely no rationale for adopting less stringent requirements for a subsidy program designed to provide in-state benefits.
- The PD eliminates the Minimum Customer Investment Provision on the apparent belief that developers are falsifying the “Project Cost Affidavits” in order to secure higher SGIP payments. If this is truly a problem, then the proper response is to suspend the SGIP

¹ Reply Comments were due on June 13, 2016. TURN received email permission from ALJ DeAngelis to file one-day late due to the illness of TURN’s attorney. TURN’s attorney hereby asserts that he did not review any of the reply comments filed by other parties on June 13, 2016.

program and conduct the audit, *not* to increase the incentives to potentially cover up to 100% of project costs.

1. The PD Must Modify the Proposal Regarding Directed Biogas to Prevent Legal Error

The Sierra Club proposes a number of revisions to the PD to ensure that projects that use “directed biogas” continue to meet applicable emissions requirements and do not result in incentives being paid for fictitious benefits. TURN strongly agrees with the Sierra Club that, as a matter of policy, directed biogas has the distinct potential to provide illusory benefits, whereby biogas injected into the pipeline system at distant locations does nothing to reduce emissions of GHG or priority pollutants from a behind-the-meter fuel cell or other natural-gas consuming generation technology.

Nevertheless, irrespective of how the Commission decides on the various policy issues, there is at least one significant legal issue that requires clarification in the PD, and amendment to the SGIP Handbook if the Commission chooses to amend existing rules to allow distant biogas projects to count for SGIP.

Presently, as explained by the Sierra Club, the SGIP rules require that projects that provide the directed biogas must “be located in California.”² This is different from the biogas eligibility rules in the CEC Renewable Handbook, and is warranted based on the fact that California residents are specifically subsidizing private behind-the-meter projects in California. However, if this SGIP eligibility criterion is removed, and the Commission seeks to align SGIP with the biogas eligibility requirements of the CEC, then the Commission must likewise ensure compliance with the “California benefits” section of the CEC

² 2016 SGIP Handbook, v. 1, Sec. 4.3.1.2, p. 54.

RPS Guidebook.³ Those provisions require that any new biomethane procurement contract must demonstrate that the capture and injection of biomethane provides at least one of three possible environmental benefits in California. These provisions are not discretionary, but implement statutory requirements for the RPS program pursuant to AB 2196 (2012). The RPS program procures renewable projects based on a competitive procurement process with no subsidy to competing projects. The Commission should not adopt eligibility rules for out-of-state directed biogas for SGIP, a program that hugely subsidizes private projects with no competitive procurement, that are more liberal than the statutory requirements for the RPS program.

The Commission must thus modify the SGIP Guidebook to require documentation of such benefits. However, in order to determine whether there are benefits in California will require additional administrative efforts. TURN suggests that there is no persuasive evidence that any need for the change to allow out-of-state directed biogas warrants the additional complexity and cost of compliance. There has been no shortage of eligible SGIP projects. Expanding the program to accommodate out-of-state directed biogas is a solution in search of a problem. The better solution is maintain the existing eligibility requirement for only in-state biogas projects.

2. The Minimum Customer Investment Provision Should Not Be Amended

The Staff Proposal recommended limiting the amount of “warranty and/or maintenance contract costs” which could be included so as to prevent

³ CEC, RPS Eligibility Guidebook, Eighth Edition, June 2015, p. 11-12.
TURN Reply Comments on PD R.12-11-005
June 14, 2016

artificial inflation of total costs, so as to ensure that a project maximizes its incentive, given the potential cap on SGIP covering only up to 60% of costs.

The PD instead adopts Tesla's suggestion that the customer contribution be entirely eliminated, based on the notion that this creates an incentive for developers "to err on the high side when reporting costs."⁴ Indeed, Tesla described that the problem exist if a developer chooses "to inflate its reported costs." In other words, the PD accepts the fact that developers may presently be lying to the Program Administrators when submitting the Project Cost Affidavit in order to maximize SGIP incentives,⁵ even though presumably such action would increase the costs to their own customers.⁶ In order to cure this problem, the PD would have SGIP potentially cover up to 100% of the project costs.

This is an outrageous response to the allegation that developers are lying to the Commission and gaming the SGIP program. If this is really a problem, TURN recommends that the SGIP program be ceased immediately and audited to determine developer compliance with existing SGIP requirements to submit an affidavit documenting Total Eligible Project Costs.

However, TURN has not seen any filing from the Program Administrators indicating concern that Project Cost Affidavits are being falsified. However, if this is a potential problem, then it should be addressed by standard requirements for project and cost documentation and penalties for perjury. The Commission could likewise adopt a total cost project cost cap. If there is a concern about

⁴ PD, Sec. 3.4, p. 45.

⁵ SGIP Guidebook, 2016, Sections 2.5.1 and 3.3.3.

⁶ Presumably both the SGIP incentive and customer costs would increase in parallel until the 60% limit is reached. Unless the customer is in collusion with the developer to report higher costs.

artificial inflation of unknown costs, the best solution from a public policy perspective is to require a customer contribution.

The solution proposed in the PD is absolutely the worst public policy response to the alleged problem.

June 14, 2016

Respectfully submitted,

By: /s/
Marcel Hawiger

Marcel Hawiger
Staff Attorney
THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876, ex. 311
Fax: (415) 929-1132
Email: marcel@turn.org